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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

TYRONE MAXIE,

Petitioner,

v.

THE SUPERIOR COURT OF LOS ANGELES
COUNTY,

Respondent;

ROBERT PREIJERS et al.,

Real Parties in Interest.

B151841

(Super. Ct. No. BC235844)

ORIGINAL PROCEEDING; petition for writ of mandate. Jean E. Matusinka, Judge.

Writ granted in part and denied in part.

Robert Mann and Donald W. Cook for Petitioner.

No appearance for Respondent.

Manning & Marder, Kass, Ellrod, Ramirez and Eugene P. Ramirez for Real Parties in
Interest.

Petitioner Tyrone Maxie seeks a writ of mandate directing respondent court to vacate its order denying petitioner's discovery motion to obtain various police department documents concerning a shooting incident in which petitioner was involved. We conclude the trial court erred in refusing to conduct an in camera review of real party Robert Preijers's personnel records, and therefore grant the petition in part.

I. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner alleges that in 1996, he was shot multiple times by real party Robert Preijers, a Gardena police officer. At the time, Preijers was working undercover, seeking to purchase drugs. He was apparently sitting in a pickup truck with an informant when petitioner and another individual approached. When the other individual pointed a gun at the informant and demanded money, Preijers pulled a gun and shot the individual. Preijers then turned to petitioner and shot him several times. Petitioner claims Preijers shot him even after he was on the ground, had raised his hands over his head to surrender, was not armed, and was not threatening injury to Preijers or anyone else. Petitioner asserts he suffered serious injuries, including paralysis and deafness.

Petitioner filed a complaint for personal injury and violation of civil rights against Preijers and the City of Gardena. Among other things, petitioner, who is African-American, alleged Preijers used excessive force against him on account of his race.

Petitioner filed a motion asking the court to conduct an in camera review and order disclosure of certain documents, including records of all excessive force complaints against Officer Preijers during the five years preceding the incident. The motion was made pursuant to Evidence Code sections 1043 and 1045, which apply to requests for information from a "peace officer[']s personnel records or records maintained pursuant to Section 832.5 of the Penal Code or information from those records." (Evid. Code, § 1043, subd. (a).)

The trial court denied the bulk of petitioner's motion, including his request that the court conduct an in camera review of Preijers's personnel records in order to determine whether there existed any excessive force complaints. This petition for writ of mandate followed.

II. ISSUE

The issue presented is whether the trial court erred in refusing to conduct an in camera review of Preijers's personnel records to determine if they contain excessive force complaints.

III. DISCUSSION

A. Standard of Review

In performing writ review of discovery orders, we apply “the abuse of discretion standard of review, keeping in mind that ‘[t]rial courts are granted wide discretion when ruling on motions to discover police officer personnel records.’ [Citation.]” (*California Highway Patrol v. Superior Court* (2000) 84 Cal.App.4th 1010, 1019; *City of San Jose v. Superior Court* (1998) 67 Cal.App.4th 1135, 1145.)

B. Discovery of Peace Officer Personnel Records

In 1978, the Legislature “codified the privileges and procedures surrounding what had come to be known as ‘Pitchess motions’ . . . through the enactment of Penal Code sections 832.7 and 832.8 and Evidence Code sections 1043 through 1045.” (*City of Santa Cruz v. Municipal Court* (1989) 49 Cal.3d 74, 81, fns. omitted (*City of Santa Cruz*).) The Penal Code sections designate peace officer personnel records as confidential, while the Evidence Code sections provide the procedures to be followed to obtain discovery of the records. (*Id.* at pp. 81-82.)

Together, sections 1043 and 1045 of the Evidence Code establish a two-step procedure for discovery of peace officer personnel records. “First, section 1043 requires the defendant to file a written motion for discovery of peace officer personnel records. The motion must include ‘[a] description of the type of records or information sought,’ supported by ‘[a]ffidavits showing good cause for the discovery or disclosure sought, setting forth the materiality thereof to the subject matter involved in the pending litigation and stating upon reasonable belief that such governmental agency identified has the records or information from the records.’ [Citations.]” (*California Highway Patrol v. Superior Court, supra*, 84 Cal.App.4th at pp. 1019-1020.) “The second step is reached after defendant makes a showing

of good cause for the discovery. [Citation.] ‘Evidence Code section 1045 specifies that once the moving party has made a showing of good cause for disclosure of peace officer personnel records, the trial court proceeds to an in chambers examination of the records to determine whether they have any relevance to the issues presented in the current proceedings.’ [Citation.] Thus, the trial court’s decision to release information requires a finding of relevance. [Citation.]” (*Ibid.*)

The standards for a showing of good cause under Evidence Code section 1043, subdivision (b) are “relatively low.” (*City of Santa Cruz, supra*, 49 Cal.3d at p. 83.) A showing of “good cause” requires a defendant to demonstrate the relevance of the requested information by providing a “specific factual scenario” which establishes a “plausible factual foundation” for the allegations of officer misconduct committed in connection with the defendant. (*City of Santa Cruz, supra*, 49 Cal.3d at pp. 84-86; *California Highway Patrol v. Superior Court, supra*, 84 Cal.App.4th at p. 1020.) Such “plausible factual foundation” may be established by a reading of the police reports in conjunction with defense counsel’s affidavit. (*City of Santa Cruz, supra*, 49 Cal.3d at pp. 85-86.)

C. Petitioner Established Good Cause

Petitioner contends he made a sufficient threshold showing of good cause to justify an in camera examination of Preijers’s personnel files. We agree.

Attached to petitioner’s discovery motion was a copy of a follow-up investigative report. It shows that Preijers shot petitioner several times. Petitioner’s counsel submitted a declaration wherein he stated on information and belief that “at no time did [petitioner] display any weapon or threaten [the officer] with injury,” and that “it appears [the officer] shot out of panic and/or anger.” Petitioner’s counsel also asserted that petitioner “was, when he was shot, laying on the ground, unarmed and not offering resistance, his hands raised up in surrender.”

In *City of Santa Cruz*, the defendant was charged with resisting arrest and exhibiting a knife. He moved for discovery of complaints regarding the arresting officers’ use of

excessive force in effecting arrests. His *Pitchess*¹ motion was supported by police reports and the declaration of defense counsel. The police reports indicated that the defendant resisted arrest and that in order to effect the arrest, one of the officers struck the defendant with his fist and wrestled him to the ground. Defense counsel’s affidavit alleged that the officers handcuffed the defendant, threw him to the ground, and stepped on his head, thereby using excessive force and rendering the arrest illegal. Defense counsel averred that complaints of similar behavior by the officers would show their propensity to use excessive force in effecting arrests. (*City of Santa Cruz, supra*, 49 Cal.3d at pp. 78-79.) In holding that the defendant had made a showing of good cause for discovery of the records sought, the court stated: “The police reports make clear that considerable force was used to effect the arrest. Counsel’s declaration asserts that the officers used excessive force ‘so as to make said arrest illegal and otherwise improper.’ The declaration sets forth, on the basis of information and belief, a specific factual scenario to support that assertion. Counsel avers that she seeks the information relating to prior complaints of excessive force against the arresting officers to ‘show a tendency or propensity on the part of the arresting officer[s] herein to engage in the use of unlawful and excessive force in the execution of the arrests.’ [¶] Viewed in conjunction with the police reports, counsel’s averments establish a plausible factual foundation for an allegation of excessive force, put the court on notice that the officers’ alleged use of excessive force will likely be an issue at trial, and articulate a valid theory as to how the information sought might be admissible. [Citations.]” (*Id.* at pp. 85-86.)

Here, the police report attached to petitioner’s discovery motion makes clear that considerable force was used during the shooting incident. Counsel’s declaration asserts that Preijers used excessive force either out of anger or panic. The declaration sets forth, on the basis of information and belief, a specific factual scenario to support that assertion. Counsel avers that he seeks the information relating to prior complaints of excessive force against Preijers in order to establish that it was Preijers who assaulted petitioner “and not the other

¹ *Pitchess v. Superior Court* (1969) 2 Cal.App.3d 644.

way around.” Viewed in conjunction with the police reports, counsel’s averments establish a plausible factual foundation for an allegation of excessive force, put the court on notice that Preijers’s alleged use of excessive force will likely be an issue at trial, and articulate a valid theory as to how the information sought might be admissible. (*City of Santa Cruz, supra*, 49 Cal.3d at pp. 85-86.)

We therefore conclude that petitioner made a showing of “good cause for the discovery or disclosure sought” pursuant to Evidence Code section 1043, subdivision (b)(3), and that the trial court erred in refusing to conduct an in camera hearing of Preijers’s personnel records to determine whether they contain complaints of excessive force.

IV. DISPOSITION

Let a peremptory writ of mandate issue directing respondent court to vacate that portion of its order of June 22, 2001, denying petitioner’s request for an in camera review of Preijers’s personnel files, and to enter a new and different order granting the request. Respondent court is directed to conduct an in camera review of Preijers’s personnel files to determine if the files contain any complaints of excessive force against the officer during the five years preceding the shooting incident. The petition is otherwise denied. Petitioner to recover the costs of this petition.

NOT TO BE PUBLISHED.

NOTT, J.

We concur:

BOREN, P.J.

TODD, J.